IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D03-4604

SEAN PECKHAM,

Appellant,

v.

SPEEGLE CONSTRUCTION, INC. and CNA INSURANCE,

Appellee.

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Opinion filed February 17, 2005.

An appeal from an order of the Judge of Compensation Claims.
David W. Langham, Judge.

John W. Wesley, Esq. of Woodburn S. Wesley, Jr., & Associates, Ft. Walton Beach, for Appellant.

Mary L. Wakeman, Esq. of McConnaughhay, Duffy, Coonrod, Pope & Weaver, P.A., Tallahassee, for Appellee.

PER CURIAM.

Claimant, Sean Peckham, appeals a final order of the judge of compensation claims ("JCC") and argues that the JCC erred in relying on the documentation of physician assistant ("PA") Steve Switzer in determining that claimant was not entitled

to temporary total disability ("TTD") benefits from February 25, 2003, through September 16, 2003. We disagree and affirm. On February 11, 2003, claimant's physician, Dr. Robert Siegel, released claimant to light duty. On February 18, 2003, Dr. Siegel excused claimant from work until a follow-up visit scheduled for February 25, 2003, when his work status would be reevaluated. On February 25, 2003, claimant was seen by Dr. Siegel's PA Switzer who noted claimant's work status as "still on light duty."

We find that the JCC's well-reasoned order denying claimant TTD from February 26, 2003,[1] through the final hearing of September 16, 2003, is supported by competent, substantial evidence. See, e.g., Chavarria v. Selugal Clothing, Inc., 840 So. 2d 1071, 1076 (Fla. 1st DCA 2003). The JCC found, in pertinent part, as follows:

> The period between February 25, 2003[,] and the final hearing is the least clear of any of the periods. In terms of documenting the complaints Claimant voiced on two office visits (02.11.03 and 02.25.03), and the examination findings to prove the compensability of his claim, Claimant relies upon the efforts and documentation of Mr. Switzer (the physician's assistant at GCIC). However, as regards the work status as of Mr. Switzer's last interaction with Claimant (02.25.03), and coincidentally the last interaction of any medical professional at GCIC (or elsewhere) with Claimant, Claimant seeks to have the conclusion of Mr. Switzer ("He is still on light duty") ignored in favor of the deposition testimony conjecture of Dr. Siegel . . . Dr. Siegel opined in retrospect (when deposed in September 2003) that it would not be "unreasonable" for

[1] Claimant was awarded TTD from February 18, 2003, through February 25, 2003, based on the opinion of his physician, Dr. Robert Siegel, that he not work during such time.

> Claimant to have been off of work as of the February 25, 2003[,] examination by Mr. Switzer. However, the record does not support that it would have been, alternatively, unreasonable for the Claimant to have been on "light duty" as the medical records indicate. I conclude that the medical evidence supports that the medical professional (Mr. Switzer) upon whom Claimant relies regarding the compensability of this case, was in the best position to determine work status as of February 25, 2003[,] as he actually examined and/or interacted with Claimant that day. He, [n]ot Dr. Siegel, was the last person at the [clinic] to provide treatment or care to Claimant. Dr. Siegel's testimony did not necessarily disagree with, contradict, or override that opinion which was rendered by his subordinate in his clinic and under his supervision and control, he merely opined that another status (TTD) would not have been "unreasonable." I accept the conclusion that Claimant was released to light duty as of February 25, 2003.

We agree and, therefore, AFFIRM.

PADOVANO and LEWIS, JJ., CONCUR; ERVIN, J., DISSENTS WITH WRITTEN OPINION.

ERVIN, J., dissenting.

I respectfully dissent. I could agree with the majority that if PA Switzer can be said to be an authorized treating provider, competent, substantial evidence supports the order denying TTD from February 26, 2003, through the final hearing of September 16, 2003. My point of departure from the majority's decision is, for the reasons stated *infra*, that a PA is not included within the statutory classification of an authorized treating provider, and therefore PA Switzer could not submit a medical opinion on claimant's work status.

The JCC based his denial on Switzer's opinion, made during his examination of appellant on February 25, 2003, that appellant then *remained* on light-duty status. Dr. Siegel, Switzer's supervising physician, disagreed with Switzer's opinion, stating instead that claimant's condition had precluded him from returning to work from February 18, 2003, through February 25, 2003, and *that* condition remained unchanged. Upon being confronted with the inconsistency between his opinion and that of his PA Switzer, Dr. Siegel replied, "I really don't know what Mr. Switzer was thinking, but I think it would not be unreasonable to consider him still off of work because that was his work status up until the 25th." In my judgment, the JCC erred in relying on the conflicting opinion of the PA.

Section 440.13(5)(e) explicitly allows only the opinions of an EMA, IME, or

authorized treating provider into evidence. I believe it reasonably clear that a PA is neither an EMA nor an IME, as those terms are defined under section 440.13. The only substantial question is whether a PA can be appropriately designated an authorized treating provider. Unfortunately, chapter 440 does not provide a definition for such position.[2] I therefore consider it necessary to consult pertinent case law to supply a meaning for the term.

In Rucker v. City of Ocala, 684 So. 2d 836 (Fla. 1st DCA 1996), this court reviewed certain sections of chapter 440 and applicable administrative rules to determine that the term, authorized treating provider, as used in section 440.13(5)(e), means "treating providers authorized by the E/SA." Id. at 839. In the present case, Dr. Siegel used the medical information compiled by Mr. Switzer in forming his opinion; consequently, under the Rucker analysis, Mr. Switzer could be viewed as falling within the ambit of Dr. Siegel's authorization to treat the claimant. Nevertheless, by statute, a PA can only "perform medical services delegated by the

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[2]Section 440.13(1)(i) does define in part a health care provider as "any recognized practitioner who provides skilled services pursuant to a prescription or under the supervision or direction of a physician and who has been certified by the agency [Agency for Health Care Administration] as a health care provider." I concede that because a PA works under the supervision of a physician, as authorized by section 458.347, Florida Statutes, a PA may be considered a health care provider. I do not concede, for the reasons stated *infra,* he must also be considered an authorized *treating* provider.

supervising physician." § 458.347(2)(e), Fla. Stat. (2002). I find nothing in the duties assigned PAs under section 458.347 explicitly authorizing them to render a medical opinion when they are acting under the indirect supervision of a physician. Indeed, a physician is forbidden by rule to delegate to a PA the right to make a final diagnosis, unless such delegation is expressly permitted by statute.[3] Fla. Admin. Code R. 64B8-30.012(2)(a)2. Nor may a PA interpret laboratory tests or X-ray studies without the interpretation and final review of the supervising physician. Fla. Admin. Code R. 64B8-30.012(2)(b)5.

In the case at bar, claimant was diagnosed with lumbar strain. The PA observed, during claimant's visit on February 25, that the patient complained of pain radiating down the right leg and, while he had full range of motion of the spine, that "straight leg raise is equivocal." Significantly, his notes concluded by stating: "He is *still* on light duty."[4] (Emphasis added.) Two conclusions are apparent from Switzer's comments and Dr. Siegel's testimony: Either Dr. Siegel did not agree with the PA's interpretation of claimant's ability to return to work, based on the performance of leg-raising tests, or the PA apparently overlooked or misread Dr.

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[3]Nothing in section 458.347 authorizes a PA to so act.

[4]PA Switzer's opinions are taken only from his somewhat cryptic notes made in the medical records of claimant's visits to the clinic. Unlike Dr. Siegel, Switzer did not testify.

Siegel's earlier work-status records of February 18, which clearly stated that claimant was then off work.

I therefore conclude that Mr. Switzer, a PA, cannot, under the provisions of section 440.13(5)(e), be deemed an authorized treating provider who is independently qualified to give a medical opinion on the claimant's ability to return to work. Because he lacks such status, his opinion, as claimant has phrased it in his initial brief, is that of a layperson which should not have been accepted over the conflicting opinion of claimant's authorized treating physician. I would therefore reverse the order denying the claim for TTD during the applicable period, and remand the case for further proceedings consistent with this dissent.